

COUNTY OF KAUAI
Minutes of Meeting
Open Session

Board/Committee:	LIQUOR CONTROL COMMISSION	Meeting Date	February 4, 2016
Location	Mo'ikeha Building, Meeting Room #3	Start of Meeting: 4:02 p.m.	End of Meeting: 4:54 p.m.
Present	Vice Chair Shirley Akita; Members: Paul Endo, Jean Iida, Gerald Matsunaga, Dane Oda, Josephine Sokei, Pauline Ventura Also: Liquor Control Staff: Director Gerald Rapozo; Deputy County Attorney Nicholas Courson; Boards and Commissions Administrative Assistant Lani Agoot		
Excused			
Absent			

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SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Shirley Akita called the meeting to order at 4:02 p.m. with 7 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 7 members were present.	
Approval of the Agenda		Mr. Matsunaga moved to approve the agenda. Mr. Endo seconded the motion. Motion carried 7:0.
Approval of the Minutes	<u>MINUTES OF THE MEETINGS OF JANUARY 21, 2016</u> Commissioner Matsunaga noted a correction to be made on Page 4, where it should have stated that the adjournment was made by Vice Chair Akita. There is also a spelling error on Page 3 to the word "conversion"	Ms. Ventura moved to approve the minutes with corrections. Ms. Iida seconded the motion. Motion carried 7:0.
1.	<u>ELECTION OF CHAIR FOR 2016</u> Vice Chair Akita noted that she will carry out the remainder of this meeting, and the new Chair's duties will commence at the next meeting.	

	<p>Commissioner Sokei nominated Commissioner Gerald Matsunaga, Commissioner Iida seconded the nomination.</p> <p>Commissioner Matsunaga nominated Commissioner Akita, who declined, stating she currently holds the position of Vice Chair.</p> <p>Attorney Courson explained, as determined at the last meeting, the position of Vice Chair was sound. Therefore, Commissioner Akita would continue as such.</p> <p>Vice Chair Akita noted that the position of Chair was a technical problem, but the Vice Chair election was done properly, and will stand; the Commission currently just needs a Chair.</p> <p>Commissioner Ventura nominated Commissioner Dane Oda, Commissioner Matsunaga seconded the nomination.</p> <p>Commissioner Matsunaga stated he feels Commissioner Oda would make an excellent Chair, Commissioner Oda stated the same of Commissioner Matsunaga.</p>	<p>Mr. Endo moved that the nominations for the position of Chair be closed. Ms. Iida seconded the motion. Motion carried 7:0.</p> <p>The Commission voted in favor of Mr. Matsunaga 4:3.</p>
Public Hearing	<p>a) <u>OLYMPIC CAFÉ</u>: Application No. 2016-91 was filed on November 19, 2015 by Goofy Footer Restaurants LLC dba Olympic Cafe for a Restaurant General (live entertainment with dancing) license located at 2360 Kiahuna Plantation Dr., Kōloa, Kauai, Hawaii.</p> <p>Director Rapozo noted the Department has received no letters of support, and two letters of concern.</p>	

	<p>Mr. Troy Trujillo, owner, was present.</p> <p>Mr. Trujillo stated that though two letters were sent, one was rescinded and a new letter was emailed. The sender's only concern was that there would be live music late at night, to which Mr. Trujillo assured that the only reason he applied for the entertainment condition was in case he had a special event such as a wedding; he has no intention of having live music on a regular basis. Mr. Trujillo stated he would operate this restaurant similar the one in Kapa'a.</p> <p>Commissioner Endo asked that should they have music, will it end at 10:00 p.m. to which Mr. Trujillo replied yes, if they do have music, it would stop at 10:00 p.m.</p> <p>Commissioner Oda asked to clarify that though the hours have been limited by the applicant, would he be within his right to operate until 2:00 a.m. under this license. Director Rapozo explained that without any conditions set to limit hours, the licensee could operate until 2:00 a.m. The Commission could choose to include a condition to restrict the hours; however, the applicant has stated that dancing and music would only be for special occasions, and would end at 10:00 p.m. Should there be any complaints, the Commission can take action after that.</p> <p>The public hearing for Application No. 2016-91 was closed.</p>	<p>Mr. Matsunaga moved to approve Application No. 2016-91. Ms. Iida seconded the motion. Motion carried 7:0.</p>
	<p>b) <u>ABC STORE</u>: Application No. 2016-92 was filed on November 25, 2015 by MNS, Ltd. dba ABC Store 93T for a Retail Dealer General license located at 4-484 Kūhi'ō Highway, Kapa'a, Kauai, Hawaii.</p> <p>Director Rapozo noted the Department has received no letters in support, and one letter in opposition.</p>	

	<p>Mr. Roy Toguchi, property manager and authorized representative for MNS, Ltd. was present.</p> <p>Mr. Toguchi addressed the letter of opposition received, stating they have read it, and are taking it very seriously. They feel the comments made do not directly reflect the operations of an ABC Store, but are more general issues of that particular area.</p> <p>Vice Chair Akita asked whether any neighborhood representatives approached anyone from MNS, Ltd. to which Mr. Toguchi replied no, stating he contacted the property manager at the Coconut Marketplace who had no knowledge of anyone contacting them, or making any complaints regarding what is referenced in the letter of opposition.</p> <p>Mr. Bob Middleton, resident and business owner on Papaloa Road, stated he is the author of the letter, which has been signed by a number of people in the neighborhood, all of whom have the same complaints.</p> <p>Vice Chair Akita noted that Mr. Middleton submitted a very lengthy letter, and asked whether he had any additional concerns. Mr. Middleton presented plans and diagrams to show specifically where the problem issues are and why they occur, and show the types of problems that have occurred at the property.</p> <p>Vice Chair Akita asked to clarify that the diagrams reference the spot that ABC Store will be located to which Mr. Middleton stated no, it is in reference to the entire property that they own. He provided a quick background, stating ABC Stores is a great company, and the neighbors were initially happy when MNS, Ltd. purchased the property. However, in the past 4 years that they have owned it, they have done a terrible management job. Mr. Middleton feels that though ABC Stores has a solid reputation,</p>	
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	<p>they are visually seeing things that should not be happening, and may be illegal, for which they have called the police. Mr. Middleton questioned whether the Investigator's report addresses the number of times the police has been called to the property, which has been very frequently.</p> <p>Vice Chair Akita asked to clarify what types of complaints were made to the police, to which Mr. Middleton explained the activities there are neglectful, which causes him to question why this application should be approved. He feels MNS, Ltd. should have addressed these issues long ago, and feels something is not right. Mr. Middleton pointed out orange spots on the map provided, which represent the residence locations of the signers of the letter of opposition. He presented old plans of the Coconut Marketplace, explaining where some old shops have been demolished within, and highlighted the new construction. He pointed out the Islander on the Beach, which is lacking parking, and Trees Lounge. He stated he attended the hearing for Trees Lounge, at which time they assured they would only be open until 10:00 p.m. which has turned out not to be the case, noting that on Wednesdays, Fridays and Saturdays they are open until 2:00 a.m. Mr. Middleton began discussing the Islander on the Beach and its parking issues.</p> <p>Commissioner Sokei interjected to ask where the ABC Store will be located to which Mr. Toguchi pointed out on the plans the exact location of the store once construction is complete.</p> <p>Mr. Middleton pointed out his residence on the map, and continued to explain that the Islander does not have enough parking, and pointed out their overflow parking.</p> <p>Commissioner Matsunaga asked how that applies to the current applicant, pointing out that MNS, Ltd. does not control that parking area. Mr. Middleton stated that MNS. Ltd.'s corporation control it because they own</p>	
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	<p>that entire parking area. Commissioner Matsunaga asked whether MNS. Ltd. owns the entire Coconut Marketplace.</p> <p>Mr. Toguchi explained, MNS, Ltd. owns ABC Stores, and also own the entire Coconut Marketplace shopping center, but what Mr. Middleton is explaining is that the Islander's guests are parking within the parking lot owned by MNS, Ltd., which they are not authorized to do. Mr. Toguchi further explained, the only people allowed to park in the MNS, Ltd. parking lot are Islander's employees, which was agreed upon due to their lack of parking. To hear that the guests were parking there was news to Mr. Toguchi.</p> <p>Vice Chair Akita stated to Mr. Middleton that he is bringing up issues already stated in the letter he submitted. While she empathized with him, she clarified that the responsibility the Liquor Commission has, which does not include enforcing parking, trash pick-up, or how the entire complex is run. She feels that it would be more appropriate for these concerns to be brought to the attention of the corporation who handles the entire complex; the Liquor Commission does not enforce that. Mr. Middleton explained he understands that; however, by approving the application, the Commission is just adding fuel to the fire, noting the already present issues occurring due to another liquor license held in the adjacent property. Mr. Middleton stated the Commission would be causing more problems on top of problems they already allowed.</p> <p>Mr. Toguchi pointed out that Trees is a bar establishment, whereas ABC Stores is a retail store that opens at 7:00 a.m. and closes at 11:00 p.m. People will not be drinking on-site. Mr. Middleton argued there is already drinking on-site in the parking lot on a regular, on-going basis, and the police won't arrest people if they don't observe it. Mr. Toguchi stated that is an issue that can be brought up with their property manager, and the Coconut Marketplace Association, which he invited Mr. Middleton to be a</p>	
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	<p>member of. Mr. Toguchi further explained that the Coconut Marketplace Association represents all of the hotels, and establishments in the area, and conduct monthly meetings. He added that all the complexed under the Coconut Marketplace Association utilize the same security firm, and those issues can be brought up at an Association meeting.</p> <p>Vice Chair interjected, noting that there needs to be much dialogue between the management of the entire complex. She explained that the Liquor Commission has certain laws they need to abide by in approving or denying an application. She stated that the Commission has no governance over the police, the trash company, the parking, etc. Mr. Middleton stated that they do, however, have jurisdiction to grant a liquor license or not to which Vice Chair Akita explained the Commission has certain things that fall within their purview, which does not include many of the concerns brought up by Mr. Middleton.</p> <p>Mr. Middleton again brought up Trees lounge, stating that their liquor license was granted, and they have been operating beyond the hours they had initially stated they would. By approving this application, the Liquor Commission would be creating another problem.</p> <p>Vice Chair Akita asserted that Mr. Middleton is accusing the Commission of shirking their responsibility by saying they allowed certain things to occur. Vice Chair Akita solicited the advice of Commission counsel.</p> <p>Director Rapozo interjected to explain that anytime there is a question of "use" that determination is made by the Planning Commission. When places such as Trees Lounge apply for a liquor license, the first thing the Department does is to check with Planning to ensure it is a permitted use. The Liquor Department looks at whether the Planning Commission has determined it a permitted use, if the applicant is fit and proper, and there is no majority protest from the neighborhood. There is a process for residents</p>	
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	<p>within 500 feet of the establishment to protest a particular application. Many of the issues brought up by Mr. Middleton reflect things that were set by the Planning Commission, which is not within the Liquor Commission's purview.</p> <p>Deputy County Attorney Courson advised that while the Liquor Commission has discretion, they should be consistent with what they usually take into consideration for this approval. Many of the issues and concerns raised are not issues typically addressed by the Liquor Commission. He stated again that the Commission does have discretion, but by not being consistent in their decisions, they open themselves up to legal challenges.</p> <p>Mr. Middleton stated he is just informing them of what is occurring on the property now, which includes many people parking, and drinking on the property. He feels it is a problem they should resolve.</p> <p>Vice Chair Akita recommended that Mr. Middleton accept Mr. Toguchi's invitation to be a part of the Coconut Marketplace Association, and bring these issues to their attention as it seems as though it is more than just a single problem; all the establishments under that association contribute to it.</p> <p>Mr. Middleton continued by saying given there are so many issues, whether they are directly related or not, he feels this license should be delayed until those items are addressed by the owner/applicant.</p> <p>The public hearing for Application No. 2016-92 was closed.</p>	<p>Mr. Matsunaga moved that Application No. 2016-92 be approved. Ms. Sokei seconded the motion. Motion carried 7:0.</p>
2.	<p><u>VIOLATION HEARING:</u></p> <p><u>JOSSELIN'S TAPAS BAR & GRILL:</u> Violation of HRS Section 281-41(e) Transfer of licenses; notice of change in officers, directors, and</p>	

	<p>stockholders of corporate licenses, partners of a partnership license, and members of a limited liability company license; penalty.</p> <p>Attorney David Banks was present to represent the licensee along with Mr. Tom Shigemoto, Vice President of A&B Properties for the Island of Kauai.</p> <p>In response to Vice Chair Akita, Mr. Banks explained he is counsel for TSAK Restaurants, LLC, which is the manager of JH Pacific Restaurants, LLC.</p> <p>The licensee admitted to the charges.</p> <p>Mr. Banks stated it is a bit complicated, but he would like to provide an explanation, noting the charge reads that the licensee failed to notify the Commission in writing of the change in partnership. Mr. Banks stated it is actually a limited liability company, not a partnership. Also, the charge states a failure to provide criminal history affidavits for the new managing member, however it is the manager, not the managing member of the LLC that is supposed to provide the affidavits.</p> <p>Mr. Banks explained that Section 281-41(e) requires an LLC to report the admission or withdrawal of a member of the LLC. He explained that JH Pacific Restaurants, LLC was formed as a member-managed LLC and had two members, Jean Marie Josselin, and Andrew Ha. In mid-October, Mr. Ha withdrew as a member of the LLC, for which they did provide notification in writing in December. At the same time in October, the company changed from a member-managed LLC to a manager-managed LLC; TSAK Restaurants, LLC became the manager, but is not a member, and does not hold membership interest in the LLC. The investigator's report speaks to TSAK Restaurants, LLC as being a new member, when it is not a member.</p>	
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	<p>Mr. Banks further explained that Section 281-41 does not contain a provision for reporting a change of manager of an LLC. There was a request from the Department and Commission for clarification, as well as criminal history backgrounds, which have been submitted.</p> <p>Mr. Banks restated in summary that they did have a member that withdrew in October, for which notification was provided to the Department in December. TSAK Restaurants, LLC is the manager of JH Pacific Restaurants, LLC, not a member.</p> <p>Deputy County Attorney Courson asked to clarify what the licensee was admitting to, to which Mr. Banks stated they are admitting to the late notification of the withdrawal of Andrew Ha as member; however that is not mentioned in the violation.</p> <p>Attorney Courson asked to clarify that the licensee is saying the violation is not applicable because no member of the LLC has changed, but rather the LLC has changed from a member-managed to a manager-managed LLC. Mr. Banks clarified that there was a change in members from two to one; Jean Marie Josselin remains a member, and Andrew Ha has withdrawn. The entity cited in the violation, TSAK Restaurants, LLC, is not, nor ever was a member; they are just the managers of the LLC. The DCCA (Department of Commerce and Consumer Affairs) website lists TSAK as a manager, not a member.</p> <p>Investigator Lorenzo Moises, who wrote up the report, explained that they have a member, yet they are manager-managed. He stated the Department did receive notification that Andrew Ha was removing himself, but stated that he was told by one of his investigators that Jean Marie Josselin is no longer a part of the LLC, which prompted him to check the DCCA website to confirm who was a part of JH Pacific Restaurants, LLC. The website showed TSAK, and upon further investigation Mr. Moises found that A&B</p>	
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	<p>Properties was part of TSAK Restaurants, LLC. Investigator Moises then called DCCA to confirm whether the information on the website was accurate, and was told it was. Mr. Banks explained again that the DCCA website lists TSAK Restaurants, LLC as a manager, not a member. He further explained that Jean Marie Josselin is no longer involved in the management of it, but is still the sole member of JH Pacific Restaurants, LLC.</p> <p>Vice Chair Akita asked to clarify that TSAK Restaurants is the manager of the LLC, and not a member to which Mr. Banks replied yes. He again noted that Section 281-41 does not address the change of managers.</p> <p>Investigator Moises stated his concern is where the revenue is ultimately going. Attorney Courson stated while that is a valid concern, counsel for the licensee has argued that they are being cited for failing to report that TSAK Restaurants is a member; however, they are not a member. The Department's concerns are legitimate, and may require further investigation, but the licensee's counsel does have a strong argument.</p> <p>Commissioner Oda questioned the legitimacy of the violation, noting the licensee's counsel has stated the change of managers is not included in Section 281-41(e).</p> <p>Mr. Banks interjected to state that in 2014, the Honolulu Liquor Commission changed its rules to address the change of managers, and they do require notification prior to the change of manager; Kauai's rules are silent on that. Mr. Banks stated the Commission may want to look into that as a change of manager is something they might be concerned about.</p> <p>Attorney Courson stated it is a legitimate concern, but the technicality of the rules matter, and currently the licensee is being accused of something that they did not violate per Section 281-41(e).</p>	
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	<p>Vice Chair Akita asked whether the licensee has something in writing to prove they are a manager to which Investigator Moises replied it has been reported.</p> <p>Commissioner Matsunaga left the meeting at 4:50 p.m.</p> <p>The violation hearing was closed.</p>	<p>Ms. Iida moved to dismiss the charges. Mr. Oda seconded the motion. Motion carried 6:0.</p>
1.	<p><u>DIRECTOR'S REPORT:</u></p> <p>a) <u>INVESTIGATORS' REPORTS</u></p> <p>b) <u>INCOMING COMMUNICATIONS:</u></p> <ul style="list-style-type: none"> (1) From Kendall-Jackson Winery (2) From Jackson Family Winery (3) From The Wine Group (4) From Delicato Family Vineyards (5) Disturbance Reports from 9th Island Sports Bar & Grill <p>c) <u>OUTGOING COMMUNICATIONS:</u></p> <ul style="list-style-type: none"> (1) To Kendall-Jackson Winery (2) To Jackson Family Winery (3) To The Wine Group (4) To Delicato Family Vineyards (5) To All Wholesale Licensees (6) Notice of Hearing to Josselin's Tapas Bar & Grill <p>d) <u>EMPLOYEES IN LICENSED PREMISES:</u></p> <p>Managers and Assistant Managers – See Attachment.</p>	

	<p>e) <u>ACTIONS OF THE DIRECTOR:</u> (1) MAKAI GOLF CLUB (2) MERRIMAN'S (3) POIPU BEACH ATHLETIC CLUB (4) THE WINE GARDEN (5) KAUAI COMMUNITY PLAYERS (6) ST. MICHAEL & ALL ANGELS EPISCOPAL CHURCH (7) WEST KAUAI BUSINESS AND PROFESSIONALS ASSOCIATION (8) WEST KAUAI BUSINESS AND PROFESSIONALS ASSOCIATION (9) DARK ROAST</p> <p>f) <u>INFORMATIONAL MATTERS:</u></p>	<p>Mr. Oda moved to receive Items 2 (a) through (f). Ms. Iida seconded the motion. Motion carried 6:0.</p>
3.	<p><u>TRANSFER OF STOCK AND CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>TREES LOUNGE:</u> Removal of Candice Myers as Vice President, Secretary and stockholder. Transfer of remaining 50% of outstanding capital stock to Mark Meyers, President and Treasurer.</p>	<p>Ms. Iida moved to approve the transfer of stock and change in corporate officers. Mr. Oda seconded the motion. Motion carried 6:0.</p>
4.	<p><u>CHANGE IN CORPORATE OFFICERS:</u></p> <p><u>MNS, LTD.:</u> Appointment of Warren K. Ishii as Director</p>	<p>Ms. Iida moved to approve the change in corporate officer. Ms. Sokei seconded the motion. Motion carried 6:0.</p>
5.	<u>SOLICITOR'S PERMIT:</u>	

	<p><u>WESLEY SAKAMOTO</u>: Application No. 2016-109 was filed on January 19, 2016 by Wesley Sakamoto for a Solicitor’s Permit in the County of Kauai to represent The Cherry Company Ltd. a Wholesale General licensee in the City & County of Honolulu.</p>	<p>Ms. Iida moved to approve Application No. 2016-109. Ms. Sokei seconded the motion. Motion carried 6:0.</p>
6.	<p><u>CHANGE OF FIRM NAME:</u></p> <p><u>LAMONTS GIFT AND SUNDRY</u>: Change in firm name on Retail General License Nos. 4G-004 and 4G-005 from “Lamonts Gift and Sundry” to “Accents”.</p>	<p>Ms. Iida moved to approve the change of firm name. Ms. Sokei seconded the motion. Motion carried 6:0.</p>
7.	<p><u>REQUEST FOR PERMANENT INCREASE OF PREMISES:</u></p> <p><u>THE BISTRO KILAUEA</u>: Permanent increase of premise to include the back fenced courtyard between the Bistro and Kīlauea Bakery, per diagram submitted, which is currently included in the lease agreement, and is under the control of Lighthouse Bistro LLC dba The Bistro Kīlauea.</p>	<p>Ms. Iida moved to approve the permanent increase of premises. Mr. Oda seconded the motion. Motion carried 6:0.</p>
8.	<p><u>PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE KAUAI LIQUOR CONTROL COMMISSION</u></p> <p>Director Rapozo noted he is trying to get onto the agenda of the Small Business Regulatory Review Board on the 17th. Once that gets approved, they can proceed with public hearing.</p> <p>Commissioner Endo asked whether there is an explanation or rationale behind why certain amendments are being proposed. Director Rapozo explained some are based on issues they have encountered in the past, and also due to new classes of licenses that have been introduced. He noted this should have been done years ago when the new classes of licenses were introduces such as Condominium, Hotel, Winery, Brewpub, etc.</p> <p>Commissioner Endo stated he feels there should be an explanation of why</p>	

	something is being removed or added. Director Rapozo stated prior to the public hearing, a special meeting or workshop can be held to discuss the reasons behind the proposed amendments.	
Announcements	Next Scheduled Meeting: Thursday, February 18, 2016 – 4:00 pm, Mo‘ikeha Building, Meeting Room #3.	
Adjournment		Vice Chair Akita adjourned the meeting at 4:54 p.m.

Submitted by: _____
Cherisse Zaima, Private Secretary

Reviewed and Approved by: _____
Shirley Akita, Vice Chair